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NO. 79-1978

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1979

HANS H. H. WEEREN and
STEPHEN C. JENNINGS,

Petitioners,

v.

CALIFORNIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the State of California has jurisdiction over petitioners' fishing activities, illegal under California law, where the swordfish taken were harpooned in the Pacific Ocean off the coast of California more than three nautical miles from shore and from any island, where the vessel from

which the fish were harpooned was registered and maintained in California for commercial swordfish fishing and was also federally documented, where petitioners, who were fishing from the vessel, were California citizens, and where there are no federal regulations whatsoever relating to the taking of swordfish?

2. Whether petitioners have standing to contest the suspended forfeiture of the vessel where neither the owner nor the mortgagee is a party to these proceedings and where the record fails to show that any objection has ever been raised by the owner or mortgagee?

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INTRODUCTION

Respondent, the State of California, respectfully requests that this Honorable Court deny the Petition for Writ of Certiorari, by which petitioners seek review of the judgment of the Supreme Court of the State of California, entered on May 14, 1980, affirming petitioners' convictions.

OPINIONS BELOW

On March 24, 1980, the seven justices of the Supreme Court of the State of California rendered an opinion unanimously affirming petitioners' convictions in the Ventura County Municipal Court, Oxnard Department, for violation of California Fish and Game Code section 2000, incorporating the provisions of Title 14, California Administrative Code, section 107(g)(2), which prohibits

the taking of swordfish with the direct assistance of an aircraft. A copy of the opinion appears at Appendix E to the Petition for Writ of Certiorari and is reported at 26 Cal.3d 654, 163 Cal.Rptr. 255, 607 P.2d 1279 (1980).

Thereafter, petitioners Weeren and Jennings petitioned unsuccessfully for rehearing in the California Supreme Court. The petition for rehearing was denied on May 14, 1980, at which time the case became final. A copy of the order denying the petition for rehearing is attached to this opposition at Appendix A.

Prior to the hearing before the California Supreme Court, each petitioner had been convicted in Ventura County Municipal Court, after the denial by that court of petitioners' motion to

dismiss the charge for lack of subject matter jurisdiction. The Ventura County Superior Court Appellate Department reversed the judgment (Petn. for Writ of Cert., App. A.) in an opinion later vacated by operation of law when the case was transferred to the California Court of Appeal. (Petn. for Writ of Cert., App. B.) The California Court of Appeal also reversed the judgment of the Ventura County Municipal Court. (Petn. for Writ of Cert., App. C.) The opinion of the California Court of Appeal is found at 155 Cal.Rptr. 789 (1979), but is officially unpublished. The State of California petitioned for rehearing but the petition was denied. A copy of the order denying rehearing is attached to this opposition at Appendix B.

Thereafter respondent State of

California petitioned the California Supreme Court for a hearing. This petition was granted. (Petn. for Writ of Cert., App. D.)

JURISDICTION

The grounds for jurisdiction of this court relied upon by petitioners Weeren and Jennings appear in the petition at page 2. For the reasons set forth in the Argument below, respondent State of California urges that jurisdiction does not lie.

Under California Rules of Court, Rule 24, the decision of the California Supreme Court became final on May 14, 1980, the date that the petition for rehearing was denied. The petition for writ of certiorari was filed by the Clerk of this Court on June 16, 1980, and thus was within the period permitted

for the timely filing of a petition. (28 U.S.C. § 2101(d); former U.S.Sup.Ct. Rule 22(1).)

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions relied upon by petitioners are set out in Appendix G to the petition at pages G-1 through G-2.

Respondent relies upon Article III, section 2, of the United States Constitution, which provides in relevant part:

> "Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority. . . ."

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The statutory provisions relied upon by petitioners are set out in Appendix G to the Petition at pages G-2 through G-6.

Respondent State of California relies on the statutory and regulatory provisions set out below.

16 United States Code section 1852 provides in relevant part:

> "(a) Establishment
>
> "There shall be established, within 120 days after April 13, 1976, eight Regional Fishery Management Councils, as follows:
>
> ". . . .
>
> "(6) Pacific Council
>
> "The Pacific Fishery Management Council shall consist of the States of California, Oregon, Washington,

and Idaho and shall have authority over the fisheries in the Pacific Ocean seaward of such States. . . .

". . . .

"(h) Functions

"Each Council shall, in accordance with the provisions of this chapter--

"(1) prepare and submit to the Secretary a fishery management plan with respect to each fishery within its geographical area of authority and, from time to time, such amendments to each such plan as are necessary. . . .

". . . ."

16 United States Code section 1856 provides in relevant part:

"(a) In general

"Except as provided in

subsection (b) of this section nothing in this chapter shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries. No State may directly or indirectly regulate any fishing which is engaged in by any fishing vessel outside its boundaries, unless such vessel is registered under the laws of such State.

". . . ."

California Fish and Game Code section 2000, provides in relevant part:

"It is unlawful to take any bird, mammal, fish, reptile, or amphibian except as provided in this code or regulations made pursuant thereto. . . ."

14 California Administrative

Code section 107 provides in relevant part:

"107. Broadbill Swordfish. Broadbill swordfish may not be taken for commercial purposes except by the holder of a reevocable permit issued by the department, and as here provided.

". . . .

"(g) Methods of Take.

". . . .

"(2) Aircraft may not be used to directly assist a permittee or any person in the taking of any species of fish while operating under a swordfish permit.

". . . ."

California Fish and Game Code section 7880 provides:

"§ 7880. Registration of vessels. Every person owning or

operating any vessel used in connection with fishing operations shall, for the purpose of identification and registration, carry in plain sight, on each side of the vessel, a Department of Fish and Game registration number."

California Fish and Game Code section 7887 provides in relevant part:

"7887. Certificate of boat registration. Every person who owns or operates a vessel in public waters in connection with fishing operations for profit in this State, or bringing fish into this State, or who, for profit, permits persons to fish therefrom, shall file a boat registration statement with the department, on a form to be provided by the department.

". . . ."

California Fish and Game Code section 7888 provides:

"7888. Contents of descriptive statement

"The statement shall include the following:

"(a) The owner's name and address.

"(b) The operator's name and address.

"(c) The name, if any, of the vessel.

"(d) The Department of Fish and Game registration number.

"(e) The State of California or United States document number.

"(f) The length and breadth overall.

"(g) The home port.

"(h) The year built.

"(i) The horsepower, if propelled by motive power.

"(j) The type of gear.

"(k) The amount of time spent in commercial fishing."

California Vehicle Code section 9840 provides in relevant part:

". . . .

"(g) 'Undocumented vessel' means any vessel which is not required to have and does not have a valid marine document issued by the Bureau of Customs of the United States or any federal agency successor thereto.

". . . ."

California Vehicle Code section 9853 provides in relevant part:

"§ 9853. Application for number

"The owner of each vessel requiring numbering by this state shall file an initial application for a number with the department [of Motor Vehicles]. . . . The application shall contain the true name and address of the owner and of the legal owner, if any, and the builder's hull number or any hull number of the vessel as may be required by the department. The application shall be signed by the owner of the vessel and shall be accompanied by a fee of five dollars ($5)."

California Vehicle Code section 9853.1 provides in relevant part:

"§ 9853.1 Issuance of certificate of ownership and certificate of number

"Upon receipt of the application

in approved form, the department shall issue a certificate of ownership . . . . stating the number issued to the vessel and the name and address of the owner."

California Vehicle Code section 9873 provides in relevant part:

"§ 9873. Undocumented vessels not required to be numbered

"An undocumented vessel shall not be numbered under this chapter if it is:

"(a) Already covered by a number in full force and effect which has been issued to it pursuant to federal law or a federally approved numbering system of another state; provided, that such undocumented vessel shall be subject to the numbering requirements of this

chapter if it has changed its state of principal use and has been within this state for a period in excess of 90 consecutive days.

". . . ."

STATEMENT OF THE CASE

The facts relating to the offense are set out in the opinion of the Supreme Court of the State of California (Petn. for Writ of Cert., App. E, pp. E-2 through E-4), as follows:

". . . [California] Fish and Game Code section 2000 . . . generally and in relevant part provides: 'It is unlawful to take any . . . fish . . . except as provided in this code or regulations made pursuant thereto.' The convictions are based on trial court findings that defendants with the use of a spotter

aircraft took broadbill swordfish contrary to the regulations of the Fish and Game Department (Cal. Admin. Code, tit. 14, § 107, subd, (g)(2)). This regulation specifically mandates that 'Broadbill swordfish may not be taken for commercial purposes except by the holder of a revocable permit issued by the department, and as herein provided. . . . (g) Methods of Take. . . . (2) Aircraft may not be used to directly assist a permittee or any person in the taking of any species of fish while operating under a swordfish permit.'

"Both of the defendants are citizens and residents of California holding commercial fishing licenses issued by the State of California.

Their 19-ton vessel, the Comanche, and the accompanying spotter aircraft, were both based in Oxnard, Ventura County, on California's southern coastline. The Comanche was licensed for commercial fishing for swordfish under Fish and Game Code sections 7880-7890. It carried an appropriate 'certificate of boat registration' and boat registration number required by those statutes. However, because it also was enrolled with a 'United States document number,' it did not bear the California identification number contemplated by Vehicle Code sections 9840-9860.

"On September 28, 1977, California Fish and Game officials boarded the Comanche at a point 10

miles south-southeast of Anacapa Island in waters of the Santa Barbara Channel, situated more than 3 nautical miles from the shore of either the mainland or of any California coastal islands. The officials determined that two swordfish seized on the Comanche had been caught at that location by defendants, with the help of radio communication and directions from a spotter aircraft. The officials remained aboard while the Comanche sailed under their direction to Channel Island Harbor in Ventura County."

REASONS WHY THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED

SUMMARY OF ARGUMENT

The Petition for Writ of Certiorari in this case should be denied. Skiriotes v. Florida, 313 U.S. 69, 85 L.Ed. 1193, 61 S.Ct. 924 (1941), held that a state may exercise criminal jurisdiction over its own citizens extraterritorially on the high seas, so long as the state's legitimate interests were involved and the state statute did not conflict with any act of Congress. Since 1941, Skiriotes has been relied upon by this Court and other courts in many decisions in regards to fishing and in other contexts involving the police power of the state. Skiriotes was rightly decided and supports the decision of the California Supreme Court in

this case.

In addition, the Fishery Conservation and Management Act, 16 U.S.C. section 1856(a), provides that no state may directly or indirectly regulate fishing which is engaged in by any fishing vessel outside state boundaries unless such vessel is registered under the laws of such state. In the instant case, if the point at which the swordfish were taken was within the State of California, the State of California clearly had jurisdiction to enforce its fishing regulations. On the other hand, if the area was outside the State of California, the State of California still had jurisdiction under Skiriotes and under 16 United States Code section 1856(a) because petitioners Weeren and Jennings were California citizens and

the vessel from which they fished was registered under California law for purposes of commercial swordfish fishing although it was also federally documented. Further, there are no conflicting federal laws or regulations relating to the taking of swordfish.

Petitioners have no standing to question the suspended forfeiture of the vessel since they do not own or have any interest in the vessel. They cannot invoke the jurisdiction of this court to vindicate the rights of a third party.

ARGUMENT

I

THE DECISION OF THE CALIFORNIA SUPREME COURT IS CONSISTENT WITH THE DECISION OF THIS COURT IN SKIRIOTES v. FLORIDA, 313 U.S. 69 (1941), WHICH HELD THAT STATES MAY REGULATE EXTRATERRITORIAL ACTIVITIES AFFECTING THE STATE'S INTERESTS, AND IS FURTHER CONSISTENT WITH THE FISHERY CONSERVATION AND MANAGEMENT ACT, WHICH AUTHORIZES STATE REGULATION OF EXTRATERRITORIAL FISHING ACTIVITIES OF VESSELS REGISTERED WITHIN THE STATE

Petitioners ask that this Court grant the Petition for Writ of Certiorari so that this Court's decision in Skiriotes v. Florida, supra, may be reconsidered. (Petn. pp. 10, 11.) Petitioners argue that Skiriotes is no longer sound law and urge that states do not have judicial jurisdiction over

persons acting outside their territory. (Petn. for Writ. of Cert., p. 11.)[1/]

Skiriotes was decided in 1941. The decision itself has never been questioned in any subsequent reported decision of this Court or of any subordinate court of the United States, or of any court of any state of the United States. Insofar as applicable in this case, Skiriotes v. Florida, supra,

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1/ Although respondent State of California argued that the Santa Barbara Channel (where the swordfish were harpooned) was within California's seaward boundaries, the California Supreme Court held that the point at which the swordfish were harpooned was beyond the state boundaries of California as defined for purposes of state/federal relations (Petn. for Writ. of Cert., App. E, pp. E-18 through E-20), but held that it was within the area in which California statutes could be applied. (Petn. for Writ of Cert., App. E, pp. E-28 through E-29.)

recognized that if the United States may control the conduct of its citizens on the high seas, a state could likewise govern the conduct of its citizens on the high seas with respect to matters in which the state has a legitimate interest and where there is no conflict with the acts of Congress. (Skiriotes v. Florida, supra, 313 U.S. at 77, 85 L.Ed. at 1200, 61 S.Ct. at 929.) This court observed in Skiriotes that when its action does not conflict with federal legislation, the sovereign authority of the state over the conduct of its citizens upon high seas is analogous to the sovereign authority of the United States over its citizens in like circumstances. (Skiriotes v. Florida, supra, 313 U.S. at 78-79, 85 L.Ed. at 1200-1201, 61 S.Ct. at 920-930.) The Court

noted in the opinion that while the Florida statutory prohibition applied to waters within the territorial limits of the State of Florida, the state had applied it to the defendant at the place of his operations. The Court stated that if the state in fact had the power to prohibit the conduct of its citizens at that place, it was not the concern of the federal constitution as to the ruling of the state court regarding the extent of the state's territorial waters. (Skiriotes v. Florida, supra, 313 U.S. at 79, 85 L.Ed. at 1201, 61 S.Ct. 930.)

In United States v. Louisiana, 363 U.S. 1, 78-79 4 L.Ed.2d 1025, 1072-1073, 805 S.Ct. 961, 1004 (1960) in note 127, this Court relied on Skiriotes in

stating that certain acts which Louisiana alleged it had performed, including the passing and enforcing of laws regulating fishing, trolling and dredging of submerged lands and the granting of leases for the cultivating and taking of oysters, fish and shrimp, constituted police power measures which Louisiana could enforce against its citizens beyond its boundaries. In the 1975 case of United States v. Alaska, 422 U.S. 184, 198, 45 L.Ed.2d 109, 121, 95 S.Ct. 2240, 2250-2251, the court cited Skiriotes in support of the statement that during Alaska's territorial period, the United States properly enforced its fish and wildlife regulations at a point off Alaska more than three miles from shore. Similarly, in Askew v. American

Waterways Operators, Inc., 411 U.S. 325, 334, 343, 36 L.Ed.2d 280, 287, 293, 93 S.Ct. 1590, 1596, 1601 (1975), the Court relied on Skiriotes, among other authorities, in concluding that sea to shore pollution has historically been within the police power of the states except where the federal and state provisions conflict. (See also United States v. Perez-Herrera, 610 F.2d 289, 290-91 (9th Cir. 1980) [defendant arrested at a point 70 miles from the United States for attempting to import drugs; held, citing authorities including Skiriotes, that Congress could regulate the extra-territorial acts of United States citizens].)

In United States v. Sylvester, 605 F.2d 474, 475 (9th Cir. 1979), an Alaska statute prohibited the sale of

certain bear hides and skulls. Both the delivery and most of the payment had been made in New Mexico. The court of appeals applied a federal statute making it an offense to sell in interstate commerce wildlife taken in violation of state law. The court noted at pages 475-476:

> "We also agree with the district judge that there is no prohibition against the extraterritorial enforcement of the Alaska provision. As he properly stated, 'a State may reach beyond its borders under its police power, to regulate game and fish if those regulations have a sufficient nexus with the protection and preservation of wildlife within the State. Silz v. Hesterbderg, 211 U.S. 31, 29 S.Ct.

10, 53 L.Ed. 75 (1980); Bayside Fish Flour Co. v. Gentry, 297 U.S. 422, 56 S.Ct. 513, 80 L.Ed. 772 (1936).' In addition, there must be 'a sufficient relationship between the regulating State and the person whose conduct is regulated. Skiriotes v. Florida, 313 U.S. 69 [61 S.Ct. 924, 85 L.Ed. 1193.] (1941).'" (See also State v. Bundrant, 546 P.2d 530, 543-44, 547-556 (Alaska Sup.Ct. 1976), app. dism. sub nom. Uri et al. v. Alaska, 429 U.S. 806, 50 L.Ed.2d 66, 97 S.Ct. 40 (1976); State v. Sieminski, 556 P.2d 929, 933 (Alaska.Sup.Ct. 1976); Felton v. Hodges, 374 F.2d 337, 339-340 (5th Cir. 1967), cert. denied 389 U.S. 971, 19 L.Ed.2d 461, 88 S.Ct. 467 (1967).)

Clearly there is no need to reconsider Skiriotes at this time, for its holding is well-established and sound. California's interest in protecting its valuable fish population is clear, and petitioners Weeren and Jennings were California's citizens and residents. Moreover, both the vessel and the aircraft were based in California, and California facilities were intended for use both in the landing and in the selling of the swordfish. California had a real and continuing interest in this case, and therefore had jurisdiction to

protect its interests.[2/] (See Petn. for Cert., App. E., pp. E-22 through E-23.)

Petitioners also urge that certiorari should be granted on the theory that the Fishery Conservation and Management Act (FCMA) has

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2/ In addition, petitioners seek to raise as a matter of due process, the question whether the California Supreme Court correctly interpreted the intent of the California Legislature in defining the state boundaries for California enforcement of state criminal law. (Petn. for Writ of Cert., pp. 15-17.) However, under Skiriotes v. Florida, supra, and the Fishery Conservation and Management Act, California clearly has the right in any event to regulate the petitioners' offshore conduct. Petitions for writ of certiorari should be granted only when substantial federal questions are in issue. (28 U.S.C. § 1257(3).) Here the issue of the intent of the State Legislature involves only state law and therefore the petition for writ of certiorari should be denied. (See Skiriotes v. Florida, supra, 313 U.S. 69, 79, 85 L.Ed. 1193, 1201, 61 S.Ct. 924, 930.)

preempted all state regulations in waters more than three miles from shore. (Petn. for Writ of Cert. pp. 12-14.) However, petitioners fail to recognize that 16 U.S.C. section 1856(a), set out in the Petition for Writ of Certiorari at page G-4, expressly provides that a state may regulate fishing engaged in by fishing vessels outside its boundaries where the vessels are registered under the laws of the state. Here, of course, the fishing was done in the Santa Barbara Channel, off the California shore. As noted in the opinion of the California Supreme Court, the vessel was registered with the State of California for the purposes of taking swordfish and was also federally documented. (App. E, pp. E-3 through E-4, E-23 thorough E-28.)

There are also no conflicting federal laws or regulations and no federal fishery management plans relating to the taking of swordfish. As observed by the California Supreme Court, an interpretation prohibiting state involvement for conservation purposes where as here there is no federal regulation relating to swordfish, would render the FCMA's express recognizition of state extraterritorial jurisdiction in 16 U.S.C. 1856(a) virtually meaningless, for such jurisdiction would be limited to pleasure boats and a few commercial fishing vessels which are less than five net tons in weight. (Petn. for Writ of Cert., App. E, p. E-25.) Certainly in a federal statute pertaining to fishing, Congress could not have intended to give a state extraterritorial jurisdiction over those

vessels as to which the state has asserted an interest only in identifying and record keeping (such as sailboats and speedboats) but to deny the state jurisdiction over vessels it has specifically licensed to engage in commercial fishing where commercial fishing occurs immediately off the coast of the state. In this case California has a legitimate and clear interest in regulating the fishing of its citizens and the vessels it has registered to engage in commercial fishing. Since no federal regulations have been promulgated under the FCMA relating to swordfish and there is applicable no conflicting federal law, it must be concluded then that the California Supreme Court was correct in holding that federal law does not preclude the application of California's fishing laws to petitioners'

activities in taking swordfish. (See Fidell, "Enforcement of the Fishery and Conservation Management Act of 1976: The Policeman's Lot," 52 Wash. L.Rev. 513, 593-97, and fn. 467 (1977); cf. Northwest Trollers Assn v. Moos, 89 Wash.2d 1, 568 P.2d 793, 795 (Wash.Sup.Ct. 1977).)[3/]

3/ Petitioners argue at pages 11-12 of their petition that any regulation by California of offshore waters is contrary to 16 U.S.C. section 1851, which is set out in the Petition for Writ of Certiorari at Appendix G, pages G-3 through G-4 to the petition. However, on its very face, section 1851 applies only to fishery conservation management plans which are prepared by regional fishery management councils. (See 16 U.S.C. § 1852, subsection (h), which requires that each council, established on geographical bases, prepare and submit fishery management plans with respect to each fishery within its geographical area of responsibility.) Clearly section 1851 was designed to prevent the situation in which access to certain fisheries is limited to residents of a particular state (cf. Douglas

Indeed, it is clear that here there is no federal preemption of California's regulations, but instead Congress has in fact expressly authorized California to issue and enforce its conservation regulations in the absence of conflicting federal regulations, the situation present in this case.

3/ (Cont'd)

v. Seacoast Products, 431 U.S. 265, 283-87, 52 L.Ed.2d 304, 318-321, 97 S.Ct. 1740 (1977). In contrast, section 1856(a) recognises that if a vessel is registered within a state, state interests become involved and extraterritorial state regulation of fishing by the vessel is permitted in the absence of conflicting federal fishery regulations.

II

PETITIONERS WEEREN AND JENNINGS HAVE NO STANDING TO QUESTION THE SUSPENDED FORFEITURE OF THE VESSEL WHERE NEITHER OF THEM IS THE OWNER OR THE MORTGAGEE OF THE VESSEL

Although the states may follow their own procedure as to who may raise constitutional questions, this Court has held that it cannot accept for hearing any state court proceeding which does not meet the case and controversy and standing requirements of Article III of the United Stated Constitution (Bateman v. Arizona, 429 U.S. 1302, 1305, 50 L.Ed.2d 32, 36, 97 S.Ct. 1, 3 (1976); see Doremus v. Board of Education, 342 U.S. 429, 434, 96 L.Ed. 475, 480, 72 S.Ct. 394, 397 (1952).) Jurisdiction extends only to actual cases and controversies. (Neb.

Press Assn. v.Stuart, 427 U.S. 539, 546, 49 L.Ed.2d 683, 690, 96 S.Ct. 2791, 2797 (1976); See generally Stern & Gressman, Supreme Court Practice § 3.35 (5th ed. 1978).)

In order to have standing, a party must have a personal stake in the outcome of the controversy. (Baker v. Carr, 369 U.S. 186, 204, 7 L.Ed.2d 663, 674, 82 S.Ct. 691, 703 (1962).) In addition, the controversy must touch upon the legal relations of parties having adverse legal interests. (Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 240-41, 81 L.Ed. 617, 621, 57 S.Ct. 461, 464 (1937).) If these requirements are met at all, they are generally shown by the complaining party's demonstration that he himself has suffered some

threatened or actual legal injury resulting from the asserted illegal action. (Linda R. S. v. Richard D., 410 U.S. 614, 617, 618, 35 L.Ed.2d 536, 540-541, 93 S.Ct. 1146, 1148-1149 (1973). See Stern & Gressman, Supreme Court Practice § 3.35 at p. 249 and cases cited therein.)

This Court has held that a person cannot invoke the jurisdiction of the United States Supreme Court to vindicate the rights of a third party. (Hanson v. Denckla, 358 U.S. 235, 244, 2 L.Ed.2d 1283, 1292, 78 S.Ct. 1228, 1234-1235 (1958).)

Here petitioners seek to litigate the propriety of the suspended forfeiture of the vessel. However, neither petitioner is the owner of the vessel; nor is either petitioner a

mortgagee of the vessel. (See Petn. for Writ of Cert., pp. 14-15.) The owners and any mortgagee of the vessel are not parties to this proceeding.

Moreover, the record does not reflect that the owner or the mortgagee has ever objected to these proceedings.

Clearly under these circumstances, the Petition for Writ of Certiorari should be denied for lack of jurisdiction to determine the propriety of the suspended forfeiture, for petitioners have not met the case and controversy and standing requirements of this Court on this issue.

CONCLUSION

It is clear that California had jurisdiction to regulate petitioners' fishing, for petitioners Weeren

and Jennings are California citizens, the vessel and the airplane were maintained in California, the vessel was registered for purposes of commercial fishing for swordfish in California, the fishing took place off the California coast, and California facilities were intended for use in both landing and selling the swordfish. The Fishery Conservation and Management Act expressly permits state regulation of vessels registered in the state as was the vessel in this case where as here there are no conflicting federal laws or regulations. In addition, petitioners have no standing to raise the question of any impropriety as to the suspended forfeiture of the vessel.

Clearly in this case, the

opinion of the Supreme Court of the State of California affirming petitioners' convictions should not be disturbed. The Petition for Writ of Certiorari should be denied.

For these reasons, it is respectfully requested that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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A P P E N D I X A

The Order of the California Supreme Court denying rehearing, is set out in the Minutes of thek California Supreme Court, page 1, California Official Reports, Official Advance Sheets, Number 16, dated June 10, 1980, as follows:

". . . .

"San Francisco, May 14, 1980.

". . . .

"Crim. 21078 -- People v. Weeren, et al. [26 Cal.3d 654]. Appellants' petition for rehearing denied."

A P P E N D I X B

The order of the California Court of Appeal denying rehearing, is set out in the Minutes of the Court of Appeal, pages 45, 47-48, California Official Reports, Official Advance Sheets, Number 21, dated July 31, 1979, as follows:

"SECOND DISTRICT

"Los Angeles, June 28, 1979.

"Division Five

". . . .

"Crim 33706 -- People v. Weeren, et al. [93 Cal.App.3d 541]. The Court: Petition for rehearing denied.

". . . ."